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Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

92-52

Re: Comments of Jay Man Productions, Inc., in MM Docket No. 97-234

Dear Ms. Salas:

Transmitted herewith, on behalf of Jay Man Productions, Inc. ("Jay Man"), by its attorneys, are an original and four (4) copies of Jay Man's comments in the above-referenced proceeding.

A "return copy" is included in this filing. Please date-stamp the return copy and return it to the messenger delivering this package.

Should you have any questions, please contact undersigned counsel.

Very truly yours,



Matthew H. Brenner

Enclosure

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act	)	
— Competitive Bidding for Commercial	)	
Broadcast and Instructional Television Fixed	)	
Service Licenses	)	
	)	
Reexamination of the Policy	)	GC Docket No. 92-52
Statement on Comparative	)	
Broadcast Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket No. 90-264
Comparative Hearing Process to	)	
Expedite the Resolution of Cases	)	

To: The Commission

**COMMENTS OF JAY MAN PRODUCTIONS, INC.**

Jay Man Productions, Inc. ("Jay Man"), by its attorneys, hereby comments on the "Notice of Proposed Rulemaking" in the above-captioned proceeding (FCC 97-397, released November 26, 1997) ("NPRM"). These comments focus on the Commission's proposed procedures for pending applications which are outside of the scope of section 309(l) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 309(l). Although Jay Man acknowledges the Commission's conclusion that mutually exclusive applications for new commercial radio stations filed after June 30, 1997 are subject to the Commission's new general

competitive bidding procedures, Jay Man respectfully urges the Commission not to reopen filing periods for mutually exclusive applications which have already closed. For equitable and practical reasons, the Commission should restrict auctions to those mutually exclusive applications that were timely filed with the Commission in response to publicly announced filing windows.

In the NPRM, the Commission states that the time for filing mutually exclusive applications under the Commission's existing procedures has closed for many broadcast applications which were filed after June 30, 1997. NPRM at ¶ 42. Comparing Section 309(j)(1) of the Act to Section 309(l) — which specifically mandates that auctions for facilities which are the subject of mutually exclusive applications which were on file before July 1, 1997 be "closed" to only those applicants then on file — the Commission concludes that it has discretion as to whether it shall conduct a "closed" auction in the case of applications filed after June 30, 1997, or permit new applicants to file additional applications that may be mutually exclusive with pending applications filed after that date. Id.

If the Commission exercises its declared discretion to open filing windows that have previously been closed, it would undermine faith in the Commission's processes and reward those applicants who previously elected not to participate in proceedings which were announced with clearly delineated time parameters. Applicants for new broadcast allotments who have already expended funds and time to participate in the announced new allotment proceedings did so with the implicit understanding that they were bound by a prescribed filing window defined by the Commission. To reopen these filing windows months after they have closed will delay

new broadcast allotments from occurring and undermines the Commission's credibility in establishing future filing windows. Based on an allotment by the Commission adopted prior to June 30, 1997, Jay Man filed such an application for a new broadcast allotment in Bend, Oregon. See FM Table of Allotment (Bend, Oregon) Report and Order, 12 FCC Rcd 9704 (1997), adopted June 25, 1997. The Commission established a filing period running from August 25, 1997 to September 25, 1997, and Jay Man filed its application during this filing period, as did the other applicants. The Commission's proposal to reopen the window would render Jay Man's participation in this earlier filing process largely irrelevant.

Jay Man, like many other applicants for new broadcast allotments, is a small business operator seeking an allotment in a smaller market. For such applicants, participation in an allotment proceeding represents a substantial financial and business risk. Certain fixed legal and engineering costs accompany any allotment proceeding, and these fixed costs are proportionately greater for small operators like Jay Man which do not have extensive financial resources to expend casually. Reopening the filing window at this late date will in all likelihood encourage the participation in auctions by other, richer parties, who have had the advantage of learning in advance who many of their bidding competitors will be. This is a serious disadvantage to a small operator. While the Commission's proposal to reopen the filing windows purports to be inclusive, it would in fact largely benefit big corporations at the expense of smaller operators.

Furthermore, opting to allow new applications at this late date runs counter to the uniform window filing approach the Commission proposes to implement for most broadcast

stations. NPRM at ¶ 59. In order to “facilitate the orderly filing of broadcast and secondary broadcast service applications,” the Commission has proposed a specific time period or auction window during which any applicants who wish to participate must file an application. NPRM at ¶¶ 61, 63. Such a process clearly establishes guidelines for participation in auctions and eliminates those potential applicants who fail to adhere to the Commission’s guidelines. By contrast, the Commission’s proposal to reopen the filing window for existing mutually exclusive applications discards similar existing guidelines in a wholesale fashion.


In proposing the transition to its new window filing approach, the Commission imposed a temporary freeze on the filing of new commercial broadcast applications. However, the Commission indicated that it would still accept rulemaking requests for the allotment of new FM channels to the FM Table of Allotments at any time, allowing applicants to file for such allotments “during subsequently announced FM auction filing windows.” NPRM at ¶ 61 (emphasis added). Thus, even prior to the adoption of its new procedures, the Commission has indicated that it intends to adhere to the use of fixed filing windows in the allotment of new broadcast channels. The Commission’s proposal to reopen those filing windows which closed between July 1, 1997 and November 26, 1997, the date of release of the NPRM, is directly at odds with this intention. To apply its policy consistently, the Commission should not reopen the filing periods for facilities for which there are currently pending mutually exclusive applications.

For the foregoing reasons, the Commission should adopt rules pursuant to Section 309(j)(1) to restrict the parties eligible to participate in an auction conducted for facilities for which competing applications were filed after June 30, 1997, to those applications already on

file with the Commission that were submitted in response to previously announced filing windows.

Respectfully submitted,

JAY MAN PRODUCTIONS, INC.

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